

UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN GURLEY, :  
: Plaintiff : No. 4:CV-04-0202  
: vs. : (Complaint Filed 01/28/04)  
: ROBERT MOCZULSKI, et al., : (Judge Muir)  
: Defendants :  
:

Order

July 12, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff, John Gurley, an inmate formerly confined in the Mahanoy State Correctional Institution, Frackville, Pennsylvania<sup>1</sup> ("SCI-Mahanoy"), filed this civil rights action pursuant to 42 U.S.C. § 1983. He alleges a denial of adequate medical treatment. Gurley seeks damages as well as injunctive relief. On May 6, 2005, defendant, Dr. Robert Moczulski, filed a motion for summary judgment, along with a statement of material facts and supporting brief. (Doc. Nos. 29-32). Plaintiff's brief in opposition to this motion is now long overdue and plaintiff has neither made an

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1. Gurley was released from confinement on August 26, 2004 and currently resides at 328 Oak Street, Pottstown, Pa.

appropriate filing nor requested an extension of time in which to do so. Thus, we will direct plaintiff to file a brief in opposition.<sup>2</sup> M.D. Pa. Local Rule 7.6.

Generally, a dispositive motion may not be granted merely because it is unopposed. However, when a plaintiff fails to prosecute or comply with a court order, the court may dismiss the action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

We will consider dismissing this case for failure to prosecute and comply with a court order under the authority of Rule 41(b) if plaintiff fails to oppose the motion or otherwise communicate with the court within twenty (20) days of the date of this order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff shall file within twenty (20) days of the date hereof a brief in opposition to defendant's motion. If plaintiff fails to file a brief in opposition, we will

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2. By order dated January 29, 2004, this court directed the parties' attention to the Local Rules of Court. (See Doc. No. 4). The order referred specifically to an opposing party's duty to file a brief in opposition to a motion within fifteen (15) days after service of the movant's brief. See M.D. Pa. Local Rule 7.6.

consider dismissing plaintiff's complaint pursuant to Rule 41(b) for failure to prosecute and comply with a court order.

s/Malcolm Muir

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MUIR  
United States District Judge